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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,434

03/31/2004

Ravindra L. Arudi

023829-0220

5476

7590

04/05/2007

Edward L. Levine  
Cargill, Incorporated  
P.O. Box 5624  
Minneapolis, MN 55440-5624

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/814,434

Applicant(s)

ARUDI ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 37-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I (claims 1-36 and 48) in the reply filed on 1/11/07 is acknowledged. The traversal is on the ground(s) that the inventions are classified in the same area and the search of both inventions would not require an undue burden on the examiner. This is not found persuasive because the search of each invention extends well beyond the single classification and the search of said inventions would not be commensurate with one another. Moreover, the search of each invention requires different search strategies.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-10, 12, 19, 20, 22-26, 28-33, 35, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsukuda et al (U.S. Application Publication 2003/0124226).

Tsukuda et al discloses a dispersible protein composition comprising soy protein (e.g. 90%; Example 1), lecithin (purified and enzyme treated), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said composition is dispersible within 5 seconds and has a particle size of 120 to 350 microns.

Due to the similarity in processing and composition between the product of Tsukuda et al and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

4. Claims 1, 3-11, 19, 20, 22-24, 26, 28-33, 35, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 60-126036.

JP 60-126036 discloses a dispersible protein composition comprising soy protein (which can be well above 90%; see Abstract), lecithin (expected to be pure or possess oil within the limits set forth in the instant claims), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said composition has excellent dispersibility (which is expected to fall within the time range called for in the instant claims).

Due to the similarity in processing and composition between the product of JP 60-126036 and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

5. Claims 1-11, 13-24, 26-36 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Schapiro (U.S. Patent No. 3988511).

Schapiro discloses a dispersible protein composition comprising soy protein (e.g. 90%;), hydroxylated lecithin on the surface of same (e.g. 1%; expected to be pure or possess oil within the limits set forth in the instant claims), and no apparent fiber (unless incidentally present and well below the limit set forth in the instant claims), wherein said composition is instantly

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dispersible (which is expected to fall within the time range called for in the instant claims). See col. 1, lines 43-68; col. 3, lines 34-51; col. 4, lines 29-55; Example 1.

Due to the similarity in processing and composition between the product of Schapiro and that of the instant invention, it is considered expected that same would possess the other characteristics and properties set forth in the instant claims (pile spread, pile apex angle, surface tension index, etc.).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 13-18, 21, 27, 34, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda et al (U.S. Application Publication 2003/0124226) or JP 60-126036 and further taken together with Schapiro and either one of Akoh et al or Burdock.

Tsukuda et al and JP 60-126036 are both silent regarding the lecithin material comprising hydroxylated lecithin. However, it is notoriously well known to employ hydroxylated lecithin in aiding in the dispersibility of soy particles as taught, for example, in Schapiro (col. 3, lines 34-51). It is furthermore, known that hydroxylated lecithin has the benefits of improved stability and dispersibility in aqueous media as taught, for example, Akoh et al and Burdock. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the hydroxylated version of lecithin for such improvements.

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8. Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of JP 60-126036 or Schapiro (U.S. Patent No. 3988511).

Although JP 60-126036 provides a product having a size that overlaps that called for in the instant claims (e.g. claim 12), it is not clear as to the median of the particles therein (200 mesh in JP 60-126036 is the upper limit which is about 75 microns). Shapiro is silent regarding the particle size altogether. Nevertheless, such determination of particle size depending on desired texture of the product, speed of dispersibility based on size, etc. would have been well within the purview of a skilled artisan, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at the particular particle median size called for in the instant claims through routine experimental optimization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
March 29, 2007

  
3/29/07